

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

UNITED STATES OF AMERICA, ET AL.,

Plaintiffs,

v.

AMERICAN AIRLINES GROUP INC. and
JETBLUE AIRWAYS CORPORATION,

Defendants.

Civil Action No. 1:21-cv-11558-LTS

**DECLARATION OF MARGUERITE M. SULLIVAN IN SUPPORT OF
DEFENDANTS' MOTION TO COMPEL ATTENDANCE
OF DELTA EXECUTIVES AT TRIAL**

I, Marguerite M. Sullivan, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

1. I am a partner at Latham & Watkins LLP, and counsel of record for American Airlines Group Inc. ("American") in this case. I have personal knowledge of the matters recited herein, and if called upon to testify concerning them under oath, I could and would testify competently thereto.

2. American served a subpoena *duces tecum* on Delta Air Lines, Inc. ("Delta") on January 17, 2022, seeking the production of documents responsive to various requests related to the Northeast Alliance and airline competition. Delta has made five document productions totaling several thousand documents in response.

3. In the context of this litigation, Plaintiffs and Defendants have multiple needs to obtain testimony from authoritative personnel at Delta and other airlines about the airlines' competitive strategy and how it is affected by the Northeast Alliance. From Defendants'

perspective, that need is most acute with respect to Delta and United Airlines because of Plaintiffs' extensive allegations that the Northeast Alliance somehow benefits these "legacy" carriers by weakening competitive pressure from JetBlue. Defendants believe the opposite is true, and that Delta and United view the Northeast Alliance as a competitive threat to which each has responded competitively.

4. During the course of discovery in this case, American deposed three Delta employees: Joseph Esposito, Senior Vice President of Network Strategies; Andrew Guenther, Director of Alliances; and Robert Somers, Senior Vice President of Global Sales. Their testimony was valuable in framing the competitive dynamics of the airline industry as a whole and in assessing the impact of the NEA on other carriers. However, their testimony—and Mr. Esposito's in particular—frequently referenced Glen Hauenstein and indicated that he has unique, firsthand knowledge of the NEA's effect on the airline industry.

5. I spoke with Delta's outside counsel, Michael Mitchell of Boies Schiller Flexner LLP, on August 25, 2022 to inform him that Defendants intended to serve subpoenas to appear and testify at trial on Mr. Esposito and Mr. Hauenstein. I informed Mr. Mitchell that Paragraph 20 of the Supplemental Scheduling and Case Management Order (ECF No. 76) ("CMO") allows for nationwide service of process. Mr. Mitchell informed me that he expected Delta would be inclined to move to quash the subpoenas, despite the Court-entered CMO, but that he would confer with his client.

6. On August 30, 2022, I spoke with Mr. Mitchell again. He informed me that he had conferred with Delta, and that if Defendants served trial subpoenas on Mr. Esposito and/or Mr. Hauenstein, Delta would move to quash the subpoenas.

7. On September 7, 2022, my colleague, Daniel M. Wall of Latham & Watkins LLP, called James Denvir of Boies Schiller Flexner LLP to try to discuss the dispute. Mr. Wall left a voicemail. In response, Mr. Denvir emailed Mr. Wall, saying, “[I]n response to your voicemail, this is to let you know that we are not going to voluntarily make available for trial either Glen Hauenstein or Joe Esposito. If you subpoena either or both we will move to quash.” A true and correct copy of Mr. Denvir’s email exchange with Mr. Wall on September 7, 2022, is attached hereto as **Exhibit 1**.

8. On September 13, 2022, I emailed Mr. Denvir and Mr. Mitchell, asking if they would accept service of subpoenas to appear and testify at trial on Mr. Esposito and Mr. Hauenstein’s behalf. Mr. Denvir responded that he would accept service on their behalf.

9. On September 13, 2022, American properly served subpoenas on Mr. Esposito and Mr. Hauenstein to appear and testify at trial. True and correct copies of the trial subpoenas to Mr. Esposito and Mr. Hauenstein are attached as **Exhibit 2**.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on September 13, 2022 in Baltimore, MD.

/s/ Marguerite M. Sullivan
Marguerite M. Sullivan

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document, which was filed with the Court through the CM/ECF system, will be sent electronically to all registered participants as identified on the Notice of Electronic Filing. In addition, I hereby certify that a copy of the foregoing document was served by email upon Michael Mitchell of Boies Schiller Flexner LLP, counsel to Delta Air Lines, Inc.

/s/ Daniel M. Wall
Daniel M. Wall